BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

MATTHEW ALAN PEARSON, Claimant, vs. DPWN HOLDINGS, INC., d/b/a STANDARD FORWARDING, Employer, and NEW HAMPSHIRE INSURANCE CO., Insurance Carrier, Defendants.	File No. 5067203 ARBITRATION DECISION Head Note No.: 1803

STATEMENT OF THE CASE

Matthew Pearson, claimant, filed a petition for arbitration against Standard Forwarding, as the employer and New Hampshire Insurance Company as the insurance carrier. This case came before the undersigned for an arbitration hearing on May 1, 2020. Pursuant to an order from the Iowa Workers' Compensation Commissioner, all in-person hearings were precluded as of the date of this hearing due to the pandemic currently affecting the state of Iowa. Accordingly, this case was heard via videoconference using CourtCall. Each of the participants for the hearing appeared remotely via CourtCall, including the court reporter.

The parties filed a hearing report prior to the commencement of the hearing. On the hearing report, the parties entered into numerous stipulations. Those stipulations were accepted and no factual or legal issues relative to the parties' stipulations will be made or discussed. The parties are now bound by their stipulations.

The evidentiary record includes Joint Exhibits 1 through 4, Claimant's Exhibits 1 through 5, and Defendants' Exhibits A through E.

Claimant testified on his own behalf. No other witnesses testified at trial. The evidentiary record closed at the conclusion of the evidentiary hearing on May 1, 2020.

However, counsel for the parties requested an opportunity to file post-hearing briefs. This request was granted and both parties filed briefs simultaneously on May 22, 2020. The case was considered fully submitted to the undersigned on that date.

ISSUES

The parties submitted the following disputed issue for resolution:

1. The extent of claimant's entitlement to permanent disability.

FINDINGS OF FACT

The undersigned, having considered all of the evidence and testimony in the record, finds:

Matthew Pearson, claimant, is a 37 year-old gentleman, who lives in Burlington, Iowa. Mr. Pearson dropped out of high school after the 10th grade, but obtained his GED in approximately 2001. (Transcript, page 11) He attended truck driving school and obtained a commercial driver's license. He has no other advanced education or training. (Tr., p. 13)

Claimant began working for Standard Forwarding as a casual driver in 2005. That employment did not last long. However, he returned to work for the employer again as a truck driver in March 2011. He was classified as a City Driver performing deliveries for the company in a local area. Mr. Pearson testified that he was required to lift every day as a driver for Standard Forwarding. He testified that he was required to squat, bend, push, pull, and twist in his position with the employer, as well as lift up to 100 pounds. (Tr., pp. 23-24) Mr. Pearson testified that his job with Standard Forwarding was the best job he has ever held. (Tr., p. 26)

Prior to his employment with Standard Forwarding, Mr. Pearson worked for other employers as a driver from 2005 through the November 29, 2016 date of injury. (Defendants' Ex. D, p. 31) His employment history also includes work as a deck hand at Catfish Bend Casino, which was mainly performance of maintenance duties. Mr. Pearson also has experience in assembly and a welding position several years ago, as well as waiting tables, food preparation, delivering pizzas, and working as a stocker and bagger at Fareway during high school. (Tr., p. 15; Defendants Ex. D, p. 31)

On November 29, 2016, claimant was loading a truck, stepped backward, and his foot caught between the bump stop and the dock plate. Mr. Pearson twisted his left ankle, then his body twisted and he fell onto the concrete landing hard on his buttocks. (Tr., p. 26) The injury is admitted and the employer sent Mr. Pearson to the emergency room on the evening of the accident.

Mr. Pearson reported low back pain that radiated into his left leg. Physical therapy was prescribed but did not improve claimant's symptoms. He was referred to a neurosurgeon, Robert D. Foster, M.D.

Dr. Foster evaluated Mr. Pearson on March 15, 2017, and recommended lifting restrictions, recommended against claimant operating equipment, and requested a lumbar MRI and suggested that a second opinion at the University of Iowa Hospitals and Clinics would also be appropriate. (Joint Ex. 1, p. 16) Following the MRI, Dr. Foster again evaluated claimant. At this April 17, 2017 evaluation, Dr. Foster concluded that there was no evidence of nerve root compression and recommended against any type of surgical intervention for claimant's low back. Dr. Foster suggested that claimant was at maximum medical improvement, released him from his care, but again recommended a second opinion at the University of Iowa Hospitals and Clinics. (Joint Ex. 1, pp. 19-20)

Defendants authorized the second opinion, which was performed by Cassim Igram, M.D., on July 5, 2017. Dr. Igram diagnosed claimant with myofascial pain, concurred that he was at maximum medical improvement and recommended against surgical intervention or further medical treatment for claimant's low back. Dr. Igram also discussed that any work restrictions imposed on claimant would likely preclude him from returning to work as a City Driver. Dr. Igram offered an opinion that Mr. Pearson sustained a five percent permanent impairment of the whole person as a result of the November 29, 2016 low back injury at work. (Joint Ex. 2, p. 5)

Mr. Pearson sought yet another surgical opinion outside of the worker's compensation process. Specifically, he sought evaluation by Benjamin D. MacLennan, M.D. on August 25, 2017. Dr. MacLennan concurred that there was no neurologic impairment in claimant's lumbar spine and recommended against any type of surgical intervention. (Joint Ex. 3, p. 3)

After Mr. Pearson had returned to work, the employer demanded a functional capacity evaluation (FCE) be performed to determine claimant's physical work capabilities. Mr. Pearson submitted to the FCE on October 24, 2017. The FCE documented the ability to lift 52.76 pounds from fifteen inches to waist level. However, the therapist performing the FCE concluded that the test was invalid due to inconsistent performance and failure to give maximum effort. (Joint Ex. 4)

No physician ever adopted the FCE results or imposed permanent work restrictions. Mr. Pearson testified that he did not want any permanent restrictions because he understood that he would lose his job if he was given permanent restrictions. Therefore, none of the evaluating or treating physicians really comment on the FCE or potential restrictions. Instead, Mr. Pearson returned to work full-duty in August 2017. He continued to work at full-duty until he sustained a subsequent injury. (Tr., p. 38)

The subsequent injury is not the subject of this hearing. None of the statements in this decision are intended to be final factual findings or decisions relative to the subsequent injury. The subsequent injury is apparently the subject of another contested case proceeding before this agency, which will be heard at a later date. However, claimant testified that he sustained a subsequent low back injury in June 2019.

Defendants requested an independent medical evaluation, which was performed by Joseph J. Chen, M.D., on January 5, 2018. (Defendants' Ex. B) Dr. Chen opined that Mr. Pearson sustained chronic, left-sided low back pain without sciatica as a result of the November 29, 2016 work injury. Dr. Chen documented that claimant was able to continue performing his usual work duties since August 2017. He recommended against any permanent restrictions, opining that he felt claimant was capable of continuing to perform work at full-duty. Dr. Chen concurred with Dr. Igram and assigned a five percent permanent impairment for Mr. Pearson's low back condition relative to the November 2016 work injury. (Defendants' Ex. B, pp. 4-5)

Mr. Pearson also sought an independent medical evaluation performed by Sunil Bansal, M.D., on February 16, 2018. (Claimant's Ex. 1) Dr. Bansal diagnosed claimant with an L4-L5 disc herniation with mild thecal sac effacement. Dr. Bansal also opined that claimant has radicular symptoms as a result of this disc herniation. (Claimant's Ex. 1, p. 10) Claimant asked that Dr. Bansal refrain from imposing any permanent work restrictions. (Tr., p. 38) Dr. Bansal obliged by not mentioning restrictions in his report. However, Dr. Bansal opined that Mr. Pearson sustained an eight percent permanent impairment of the whole person as a result of his November 29, 2016 low back injury at work. (Claimant's Ex. 1, p. 11)

Although none of the physicians have imposed permanent work restrictions, Mr. Pearson testified that he has ongoing low back and left leg symptoms since the injury date. (Tr., p. 37) Mr. Pearson testified that his lead man helped him with loading his truck for approximately a month after he returned to work. (Tr., pp. 35, 50) He also testified that he was able to get assistance from co-workers and customers with any heavy work since returning to work. However, Mr. Pearson conceded at the time of trial that he is still required to do some dock work, lifting and loading approximately three or four days per week. (Tr., p. 51)

Following the subsequent alleged injury in June 2019, Mr. Pearson was placed on work restrictions, including a lifting restriction that has precluded him from returning to his job at Standard Forwarding. Although he remained employed with Standard Forwarding at the time of hearing, he had not returned to work since the alleged June 2019 injury. (Tr., p. 42)

He explained that, since the November 2016 injury, he always made sure he got the company's electric pallet jack to make his work easier. (Tr., p. 35) However, Mr. Pearson testified that he does not believe he could return to all of his work duties with his low back condition. (Tr., pp. 45-46)

I accept claimant's contentions to some extent. Mr. Pearson was worried about retaining his job, since this was the best job he ever held. He did not want permanent work restrictions and his various physicians honored that request. It is likely that Mr. Pearson did receive help in performing his job duties after the November 2016 work injury. I find it likely that Mr. Pearson did continue to experience symptoms in some manner and to some degree. None of the physicians suggests that he returned to

"normal" after the November 2016 injury or that he was symptom free. Each of the physicians asked about the issue opined that Mr. Pearson sustained permanent impairment as a result of the November 2016 injury. It is also probable that claimant found alternate ways to perform his job duties, such as using the electric pallet jack. However, I also find that Mr. Pearson had no medical restrictions and did perform dock work after the November 2016 work injury.

As I consider the medical opinions in this case, I find the opinions of Dr. Foster, Dr. Igram, Dr. Chen, and Dr. MacLennan to be relatively consistent. Each of those physicians found no surgical condition and none of them diagnosed claimant with a disc herniation or other objective findings that clearly explained his symptoms. Dr. Igram and Dr. Chen both opined that claimant sustained a five percent permanent impairment of the whole person.

On the other hand, Dr. Bansal diagnosed claimant with a disc herniation. I find this opinion to be less credible than the other opinions. Dr. Foster, Dr. Igram, and Dr. MacLennan are all back surgeons. Dr. MacLennan was selected by claimant and rendered an opinion similar to the other surgeons. None of these surgeons diagnosed a disc herniation or recommended any surgical intervention for claimant's low back as a result of the November 2016 work injury. Considering the relative weight to be given to the medical opinions, I accept the opinions of Drs. Foster, Igram, Chen, and MacLennan over those offered by Dr. Bansal. I specifically find that Mr. Pearson sustained a permanent injury to his low back as a result of the November 29, 2016 work injury. I find that he sustained a five percent permanent impairment of the whole person as a result of that injury. However, claimant proved no need for permanent work restrictions as a result of the November 2016 work injury. While he likely received some assistance from co-workers and customers and continued to experience symptoms after the injury date, Mr. Pearson remained medically capable of performing his City Driver job or any of the prior jobs he held. That being said, I accept Mr. Pearson's testimony that he had ongoing symptoms after the November 2016 work injury that would make it more difficult to perform his City Driver job and many of his prior jobs.

Mr. Pearson's actions since his injury also demonstrate that he is a very motivated worker. He returned to work. He worked through pain. He requested that his physicians not impose medical restrictions because he wanted to continue to work for Standard Forwarding. He described this as the best job he has ever held "by far." The employer should be praised for creating a work environment in which the claimant likes his job so much that he wants to keep it all costs and is willing to work through pain to keep the job. Claimant should also be praised for his efforts to return and continue working.

Considering Mr. Pearson's age, education, employment history, ability to return to his City Driver positon, the severity level of his injury, the length of his healing period, his permanent impairment, lack of permanent restrictions, his motivation, as well as all other relevant factors of industrial disability outlined by the Iowa Supreme Court, I find

that Mr. Pearson proved he sustained a 15 percent loss of future earning capacity as a result of the November 29, 2016 work injury.

CONCLUSIONS OF LAW

The claimant has the burden of proving by a preponderance of the evidence that the injury is a proximate cause of the disability on which the claim is based. A cause is proximate if it is a substantial factor in bringing about the result; it need not be the only cause. A preponderance of the evidence exists when the causal connection is probable rather than merely possible. George A. Hormel & Co. v. Jordan, 569 N.W.2d 148 (Iowa 1997); Frye v. Smith-Doyle Contractors, 569 N.W.2d 154 (Iowa App. 1997); Sanchez v. Blue Bird Midwest, 554 N.W.2d 283 (Iowa App. 1996).

The question of causal connection is essentially within the domain of expert testimony. The expert medical evidence must be considered with all other evidence introduced bearing on the causal connection between the injury and the disability. Supportive lay testimony may be used to buttress the expert testimony and, therefore, is also relevant and material to the causation question. The weight to be given to an expert opinion is determined by the finder of fact and may be affected by the accuracy of the facts the expert relied upon as well as other surrounding circumstances. The expert opinion may be accepted or rejected, in whole or in part. St. Luke's Hosp. v. Gray, 604 N.W.2d 646 (Iowa 2000); IBP, Inc. v. Harpole, 621 N.W.2d 410 (Iowa 2001); Dunlavey v. Economy Fire and Cas. Co., 526 N.W.2d 845 (Iowa 1995). Miller v. Lauridsen Foods, Inc., 525 N.W.2d 417 (Iowa 1994). Unrebutted expert medical testimony cannot be summarily rejected. Poula v. Siouxland Wall & Ceiling, Inc., 516 N.W.2d 910 (Iowa App. 1994).

In this case, the parties stipulate that Mr. Pearson sustained permanent disability in some amount. The parties also stipulate that the permanent disability should be compensated with industrial disability pursuant to Iowa Code section 85.34(2)(u) (2016).

Since claimant has an impairment to the body as a whole, an industrial disability has been sustained. Industrial disability was defined in Diederich v. Tri-City Ry. Co. of Iowa, 219 Iowa 587, 258 N.W. 899 (1935) as follows: "It is therefore plain that the Legislature intended the term 'disability' to mean 'industrial disability' or loss of earning capacity and not a mere 'functional disability' to be computed in the terms of percentages of the total physical and mental ability of a normal man."

Functional impairment is an element to be considered in determining industrial disability which is the reduction of earning capacity, but consideration must also be given to the injured employee's age, education, qualifications, experience, motivation, loss of earnings, severity and situs of the injury, work restrictions, inability to engage in employment for which the employee is fitted and the employer's offer of work or failure to so offer. McSpadden v. Big Ben Coal Co., 288 N.W.2d 181 (Iowa 1980); Olson v. Goodyear Service Stores, 255 Iowa 1112, 125 N.W.2d 251 (1963); Barton v. Nevada Poultry Co., 253 Iowa 285, 110 N.W.2d 660 (1961).

Compensation for permanent partial disability shall begin at the termination of the healing period. Compensation shall be paid in relation to 500 weeks as the disability bears to the body as a whole. Section 85.34.

I considered all of the relevant factors outlined by the Iowa Supreme Court to assess industrial disability. I found that Mr. Pearson proved a 15 percent loss of future earning capacity as a result of the November 29, 2016 work injury. This is equivalent to a 15 percent industrial disability and entitles claimant to an award of 75 weeks of permanent partial disability benefits. Iowa Code section 85.34(2)(u) (2016).

ORDER

THEREFORE, IT IS ORDERED:

Defendants shall pay claimant seventy-five (75) weeks of permanent partial disability benefits commencing on July 19, 2017.

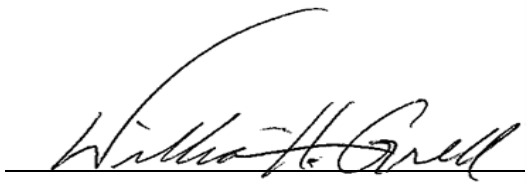
All weekly benefits shall be payable at the stipulated weekly rate of seven hundred fifteen and 18/100 dollars ($715.18) per week.

Defendants shall be entitled to the stipulated credit on the hearing report.

Defendants shall pay accrued weekly benefits in a lump sum together with interest at the rate of ten percent for all weekly benefits payable and not paid when due which accrued before July 1, 2017, and all interest on past due weekly compensation benefits accruing on or after July 1, 2017, shall be payable at an annual rate equal to the one-year treasury constant maturity published by the federal reserve in the most recent H15 report settled as of the date of injury, plus two percent. See Gamble v. AG Leader Technology File No. 5054686 (App. Apr. 24, 2018).

Defendants shall file subsequent reports of injury (SROI) as required by this agency pursuant to rules 876 IAC 3.1(2) and 876 IAC 11.7.

Signed and filed this 4th day of June, 2020.



WILLIAM H. GRELL
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

The parties have been served, as follows:

Nicholas Pothitakis (via WCES)

Eric Lanahm (via WCES)

Lara Plaisance (via WCES)

Right to Appeal: This decision shall become final unless you or another interested party appeals within 20 days from the date above, pursuant to rule 876-4.27 (17A, 86) of the Iowa Administrative Code. The notice of appeal must be filed via Workers' Compensation Electronic System (WCES) unless the filing party has been granted permission by the Division of Workers' Compensation to file documents in paper form. If such permission has been granted, the notice of appeal must be filed at the following address: Workers' Compensation Commissioner, Iowa Division of Workers' Compensation, 150 Des Moines Street, Des Moines, Iowa 50309-1836. The notice of appeal must be received by the Division of Workers' Compensation within 20 days from the date of the decision. The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or legal holiday.